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SPECIAL JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

TUESDAY, JUNE 15, 1948

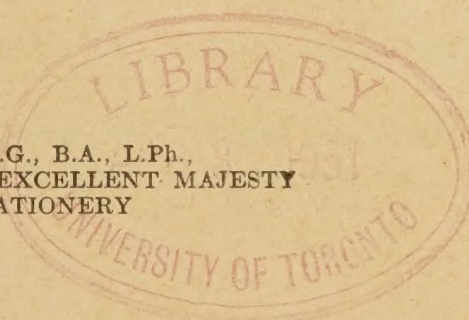
WITNESSES:


Mr. F. P. Varcoe, Deputy Minister, Department of Justice, Ottawa;

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY

1948





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MINUTES OF PROCEEDINGS

TUESDAY, 15th June, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairmen Right Honourable J. L. Ilsley and Honourable Senator L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Bouffard, Fallis, Horner, Leger, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Curnoyer, Croll, Diefenbaker, Hackett, Hansell, Marier, Marquis, Robinson (*Simcoe East*), Whitman.

In attendance: Mr. F. P. Varcoe, Deputy Minister and Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

The Chairman filed copies of replies received from some attorneys-general of provinces and deans of Canadian law schools in reply to the question submitted by the 1947 Special Joint Committee on Human Rights and Fundamental Freedoms, namely—" . . . power of the Parliament of Canada to enact a comprehensive bill of rights applicable to all of Canada". (Circulated to members as Committee document No. 25).

The Chairman presented the following as a Third Report of the Steering Committee:

It is recommended:

1. That the Committee conclude the reading of briefs received from interested organizations.

2. That an officer of the Department of Justice be called to comment upon a bill of rights:

(a) enacted by federal statute;

(b) enacted as an amendment to the B.N.A. Act.

And in particular to comment with respect to its effect upon dominion and provincial legislation now existing or to be reasonably anticipated.

3. That the Committee then take up the drafting of a final report and consider recommendations to be included therein.

On motion of Honourable Mr. Turgeon, the said report was concurred in.

The Committee resumed the consideration of written representations received from groups and organizations which had expressed a desire to place their views before the Committee:

The following which are not printed in the evidence were read to the Committee:

(a) A brief from organizations representing the Chinese people of Canada;

(b) A brief presented by the Canadian Daily Newspapers Association.

Mr. Henry was called and questioned in respect of recommendations made in the written representations reviewed by the Committee.

Mr. Varcoe was called. He made a statement commenting on the effects of a bill of rights in regard to dominion and provincial legislation and was questioned.

The witnesses were retired.

The Committee adjourned at 5.25 p.m. to meet again at 4.00 o'clock p.m. Wednesday, 16th June.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
June 15, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4.00 p.m. Hon. Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: The committee will please come to order. The clerk of the committee suggests that we acknowledge the receipt of these letters from the attorneys-general and the deans of law schools and so on. They are contained in committee document No. 25 which is a copy of the correspondence.

Now, the steering committee met this morning and decided to report to the committee as follows:

Your Steering Committee presents the following as its

THIRD REPORT

It is recommended:

1. That the Committee conclude the reading of briefs received from interested organizations.

2. That an officer of the Department of Justice be called to comment upon a bill of rights;

(a) Enacted by federal statute;

(b) Enacted as an amendment to the B.N.A. Act.

And in particular to comment with respect to its effect upon dominion and provincial legislation now existing or to be reasonably anticipated.

3. That the Committee then take up the drafting of a final report and consider recommendations to be included therein.

I may say in presenting that report that the main matter we considered was as to whether after these briefs are read the persons who submitted them should be sent for and asked to come and give oral evidence. Now, there is not very much time; and we came to the conclusion that the first thing to do, after these briefs were before the committee, was to have the officers of the Department of Justice give some evidence as to the implications of accepting the suggestions that were placed before the committee. Does anybody move the adoption of the report of the steering committee?

Hon. Mr. TURGEON: I so move, Mr. Chairman.

Mr. DIEFENBAKER: Mr. Chairman, there is one matter I should like to bring to the attention of the committee. Somebody phoned me up a little while ago and said that Mr. How had a submission to make, but it was not quite ready and would be filed on Friday. Subject to him being able to file it—I do not know what it is—

The CHAIRMAN: I have a pretty good idea what it is. There has been some correspondence about it. If it were before us now we would treat it as the other briefs or submissions are being treated; it would be read to the committee. If he does not get it in until Friday, perhaps we will not be able to read it; we will simply circulate it among the members of the committee.

Mr. DIEFENBAKER: I think it appears in the Canadian Bar Review.

The CHAIRMAN: I thought it would be exactly that article which appeared in the Canadian Bar Review. However, it may be something else.

Mr. DIEFENBAKER: Mr. Friedman wished to have an opportunity of filing it.

The CHAIRMAN: Yes, he will have that opportunity.

It has been moved that the report of the steering committee be adopted.

Carried.

(The committee went into executive session to hear the reading of briefs.)

The CHAIRMAN: If the report of the steering committee is followed we will now ask some representative of the Department of Justice to give the committee an idea of the implications of the passing of a federal statute to give effect to some of these representations, that is, the enactment of a bill of rights by federal statute rather than by constitutional amendment. Perhaps I should first ask Mr. Henry, who is here, if it is true that all the briefs and submissions to the committee that have been presented and read request a constitutional amendment rather than a federal statute? Is that correct?

Mr. HENRY: That is correct, sir.

The CHAIRMAN: What about the one from the civil rights union?

Mr. HENRY: That does not in so many words request a constitutional amendment, but the implication of pages 10 and 11 is that it would be by constitutional amendment. On page 11 the following words appear:—

The question is whether the Canadian people need and want a bill of rights. If they do then the next step is to see what constitutional changes would be needed in order to bring it into operation.

The CHAIRMAN: Yes. The submission of the committee for a bill of rights expressly asks for a constitutional amendment, does it not?

Mr. HENRY: That is right, and submits a suggested draft bill.

The CHAIRMAN: The submission of the Canadian Jewish Congress asks for what?

Mr. HENRY: That is concerned mainly with the international bill of rights which we studied previously.

The CHAIRMAN: Does it request anything in the way of a Canadian bill of rights?

Mr. HENRY: Apparently not; they confine themselves to comments on the international declaration.

The CHAIRMAN: The submission of the organizations representing the Chinese people of Canada asks for what, a constitutional amendment?

Mr. HENRY: What they mainly desire is the repeal of certain existing measures.

Mr. MARQUIS: They refer to employment.

Mr. HENRY: Perhaps their most general submission appears on page 9 of the brief. It reads:—

We therefore invite you to recommend that parliament establish as a right (1) that every person shall enjoy the right to buy or rent property without discrimination because of race; (2) that every person shall enjoy the right to obtain accommodation in a hotel or gain admission to a theatre or use the facilities of any public place without discrimination as to race.

Apart from that general comment I think the intention is to deal with specific existing measures.

The CHAIRMAN: In so far as they ask for any general enactment it is an enactment by the parliament of Canada?

Mr. HENRY: That is the suggestion on page 9, that parliament establish certain rights.

Mr. MARQUIS: As far as the parliament of Canada has jurisdiction.

The CHAIRMAN: Yes; they do not say anything about jurisdiction.

Mr. MARQUIS: They do not distinguish.

The CHAIRMAN: That is the submission of the organizations representing the Chinese people. The submission of the Canadian Daily Newspaper Association requests a constitutional amendment, does it not?

Mr. HENRY: That is right.

The CHAIRMAN: Rather than a federal statute, and we have not yet received the submission of the representatives of the Witnesses of Jehovah?

Mr. HENRY: We have merely an article which they forwarded and they have asked that a further submission be circulated when they have had an opportunity to print it.

The CHAIRMAN: I recall they forwarded us merely a statement of the law in the United States and a defence of the bill of rights in the United States, or the principles of the bill of rights in the United States?

Mr. HENRY: That is correct, sir.

The CHAIRMAN: When we come to consider our recommendations the steering committee thought the first question that should be considered would likely be how much consideration should be given to this proposal for the enactment of a federal statute which could be called a bill of rights. That suggestion was made in the House of Commons and indeed the amendment to the resolution which was accepted in the House of Commons appears to be based upon the possibility that the enactment of a federal statute will be given consideration because that amendment suggests that the prospective terms of that statute be referred to the Supreme Court of Canada for an opinion as to jurisdiction. I will read the amendment. The amendment was:

That the committee shall have power to recommend (a) that there be referred to the Supreme Court of Canada such questions as in the opinion of the committee are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press and assembly, and the maintenance of the constitutional safeguards of the individual, are matters of federal jurisdiction; or (b) that there be referred to the Supreme Court of Canada a draft bill of rights, containing such provisions as in the opinion of the committee should be included therein, to determine whether or not it is within the powers of the federal parliament to enact such a bill of rights for the Canadian people.

It was the view of the steering committee that before we address ourselves to that question as to whether consideration should be given to the enactment of a federal statute we should get some further information as to the possible consequences of such a step on the legislation of the provinces and of the dominion. For that reason they recommended that an officer of the Department of Justice be called to comment upon a bill of rights enacted by federal statute. Mr. Varcoe, the Deputy Minister of Justice, is here. I should like to ask him to make as clear as possible what the situation would be that would arise if a bill of rights were enacted by the parliament of Canada.

F. P. VARCOE, Deputy Minister of Justice, called.

The WITNESS: I will try to do so, but it is quite a task to undertake to discuss what the implications, effects, and so forth, are of a statute that has not taken form yet, and we do not know what it contains. I thought that such a statute might take a form something like the following. If parliament were to undertake such a thing I should think that parliament would first of all consider something like this. I have scribbled this out rather hurriedly.

(1) It is an offence, punishable as hereinafter provided for any person wilfully to do any act which has the effect of obstructing or preventing

(a) the free exercise of religious worship by any person,

(b) the peaceable assembly of any persons,

(c) the printing or distribution by any person of a newspaper, magazine or other such publication,

(d) any person from lawfully communicating by speech or writing with any other person.

Then it goes on:

(2) An offence against this section is punishable on summary conviction or on the election of the attorney-general on indictment by fine or imprisonment, and so forth.

If such a statute as that were passed the only justification constitutionally for it would be criminal law, I should think.

I want to discuss now for a few minutes the implications, as the chairman puts it, of such a bill as that. Before considering it I should like to remind the committee that under our system every person in the country is free to do anything that he wishes to do subject only to such restrictions as the law imposes on him. That being the case a bill of this kind must be directed against things that would be otherwise lawful for persons to do. Therefore the statutes which would authorize things which this statute would now attempt to avoid would be either dominion statutes or provincial statutes. If they were dominion statutes there would be no need to have such a thing as this because if there is such a dominion statute which imposes undue restrictions on freedom of the inhabitants that statute could be repealed or amended.

If on the other hand this bill was directed towards provincial legislation you immediately have a conflict with the provinces. The accusation would be that parliament was attempting to regulate the affairs of the provinces. As I see it that would be the situation. Those are the implications that I see in this sort of scheme. I do not know whether I have made that quite clear, but if you had a statute of this kind enacted by parliament I repeat it would be directed against things that were otherwise lawful, and the lawfulness of those things would depend upon either dominion or provincial statutes. If the lawful act you are trying now to make unlawful was the result of a dominion statute it seems to me the proper course to follow would be to amend or repeal the dominion statute. If on the other hand the lawfulness you are trying to make unlawful results from a provincial statute then you are clearly enacting a law that would be in prospective conflict with provincial legislation. Is that clear?

By the Chairman:

Q. Yes, but let me ask you a few questions about that. What would the effect of passing such a federal statute be on future dominion legislation?—A. I should have mentioned that. Of course, it would have no effect on future dominion legislation because parliament is a sovereign legislature and cannot be restricted by itself. That is, it can always repeal or amend its own legislation, so that if such a statute as this were enacted it could be repealed at the next session of parliament.

Q. And it would effect no constitutional safeguard against future Acts of the dominion parliament?—A. No, that is correct.

Q. And what effect would it have on future provincial legislation?—A. Well, it would operate against future provincial legislation if it was repugnant to the provincial legislation. You would be restricting the provinces indefinitely.

Q. You would only be restricting the provinces if this statute had constitutional effect?—A. Oh, quite, yes. Certainly I am assuming such a bill as

this would be tested out very early in its life to determine whether it was or was not a valid exercise of the powers of parliament, but as I say if it is valid it would be valid because of it being criminal law.

By Hon. Mr. Turgeon:

Q. Suppose a law of that nature were passed by the federal parliament; ordinarily would the court test come when provinces which had provincial statutes clashing with this would bring it to the courts, or would action under the provincial law and the breach of the federal law bring about the test in court?—A. I should think a breach of this statute would bring about the test.

Q. Under the justification of the provincial statute would bring about the test?—A. Yes.

Mr. MARQUIS: It seems to me in Canada there is pretty wide freedom and perhaps a bill of this kind seems to try to impose some restrictions on the population rather than to enlarge the freedom of the population. As Mr. Varcoe said a few minutes ago every citizen is free in the country. Naturally when we have to study an international declaration of human rights, those who had to study that declaration contemplated that in the world at large. There are many countries where there is not much freedom, but here in Canada everybody has the right to act and to do what he thinks fit to do. The only restrictions we have have been passed by parliaments and the legislatures of the provinces. The people represented by their members in the House of Commons or in the provincial legislatures have felt that it was proper to adopt these laws and these regulations.

If we adopt a bill as general as this may be I do not know where we would wind up in view of the matter of provincial jurisdiction, where civil rights are under the jurisdiction of the provinces in nearly all cases.

The CHAIRMAN: It is quite obvious if we attempted to enact a federal statute such as the draft statute which Mr. Varcoe submitted for purposes of discussion we would at once have on our hands a conflict with the provinces. We know that because we have the views of some of the attorneys general. We have the views of deans of law schools which deny expressly our right to enact a comprehensive bill of rights by federal statute. We know that to begin with.

It may be that the extent of federal powers is uncertain, and that litigation could go on. Perhaps it would not be settled in one case. It might be settled in a series of cases. We do not know what would stand and what would not, but after we are all done we have no constitutional safeguard so far as future acts of the dominion parliament are concerned.

Mr. MARQUIS: Yes, and if we adopt such a law it might be changed every year. If it were an amendment to the constitution it would remain the same. It would be done in conference with the provinces, and all the parliaments would be represented. I do not know what would be the use of adopting a law which would increase certain conflicts which may be in existence. I think such a law should arise through evolution when the people of every province are ready to adopt the same views. It is a natural process, but if this procedure were followed it would be rather a technical trial of a new scheme, and I feel there is some resentment in that direction right now.

The CHAIRMAN: Are there any other members of the committee who would like to express any views?

By Hon. Mr. Leger:

Q. If you made it a general law subject to the approval of the provinces it would seem then you would certainly have jurisdiction?—A. You mean parliament and the provinces should concurrently pass the same law?

Q. Exactly.—A. Well, that would be all right until there was some conflict with that general law that I am now imagining. It is purely imaginary.

Q. It would be all right until a province objected.—A. Until a province passed some statute that interfered with one of these freedoms.

Mr. MARIER: Even the federal government can pass a new statute to restrict certain liberties which already exist at the present time for certain reasons which we cannot foresee for the time being.

The CHAIRMAN: Legislation passed by a provincial parliament would no more bind future legislatures than legislation passed by the dominion parliament would bind future parliaments.

Hon. Mr. LEGER: Exactly.

The CHAIRMAN: There would be no constitutional safeguard there. The reason I am bringing this up is because I have come to a conclusion, and I do not mind announcing my conclusion. I am not doing so as a member of the government or because I am retiring from the government, but I am stating as a member of the committee that I do not feel that the government of Canada should be asked by this committee to give consideration, certainly not favourable consideration, to the enactment of a bill of rights by federal statute. That is the conclusion I have come to, and that is the view I am going to express in this committee. I am going to submit the view that any consideration that we suggest should be a consideration of the other suggestion that has been made by all except one of those who have made submissions, and that is a constitutional amendment. I expressed these views to the steering committee this morning, and that is the reason the steering committee thought we should have advice from the Department of Justice upon a bill of rights enacted by federal statute first, and secondly enacted by an amendment to the British North America Act which would, of course, affect the constitutional safeguards all right but might have most debatable consequences otherwise. I am suggesting that this committee might just as well talk about that other branch of the submissions rather than this one because I think the case against this one is very, very strong.

Mr. MARQUIS: Such an amendment could not be made without having a conference of the provinces in order to discuss points which may be under the jurisdiction of the provinces.

The CHAIRMAN: The enactment of such a federal statute?

Mr. MARQUIS: No, an amendment to the constitution.

The CHAIRMAN: An amendment of the constitution should not be entertained at all without consultation with the provinces, I think everybody would agree with that.

Mr. MARQUIS: I think it might be preferable to have the provinces and the federal government agree on certain points than to have a disagreement on a federal statute adopted *ex parte* by the federal government.

The CHAIRMAN: I agree with what you say.

Mr. HANSELL: I do not quite see how you can pass a federal bill of rights that would be workable unless the provinces surrendered some of their rights.

The CHAIRMAN: No.

Mr. HANSELL: It is not a matter of co-operating with the provinces and saying "If you pass this legislation then we can pass a bill that is workable", for the reason that five years hence the provinces may want to reverse their decision.

The CHAIRMAN: I will be glad to hear any further views or comments on the proposal that a bill of rights be enacted as a federal statute.

Mr. HANSELL: There is another phase of the matter I would like to ask Mr. Varcoe about because he has a clever legal mind, and this subject has bothered me considerably in this whole matter. It is a little difficult for me to

make myself clear, but would Mr. Varcoe care to express his opinion on this: how is it possible to legislate in order to give freedom to citizens? I can understand how you could legislate to restrict freedom, and I can understand how you could legislate to give to citizens something of material value. You might even legislate to give citizens the national dividend which you might say would give them a certain economic freedom. But here we are all free people. Now, how can you legislate to give that freedom?

The WITNESS: By making it an offence for any person to interfere with that freedom.

Mr. MARQUIS: To present some restrictions.

Mr. HANSELL: I think that is a good answer; but the very principle of that answer is that we are restricting the freedom of someone else.

The WITNESS: I suppose it can be said that every duty corresponds to a right; that is, everyone has a right on one side and a duty on the other. I heard a clergyman say the other day that the first bill of rights was the Ten Commandments; they command people to do certain things and prohibit people from doing certain things, and each one of those commands involves a right on the part of somebody else.

Hon. Mr. GOUIN: In other words, "Thou shalt not steal" creates the right of property.

Mr. HANSELL: I can understand that. Does it not in principle go this far, that a man is free just so long as his freedom does not interfere with the freedom of others? Would not that be the case?

The WITNESS: That is a good theoretical statement of our system, I should think.

Mr. MARQUIS: A man is free to enjoy his liberty as long as he does not deprive his brother of enjoying the same thing.

Mr. MARIER: I wish to ask a question with regard to the proposed bill you have submitted—

The WITNESS: I am not proposing it.

Mr. MARIER: No, I know; you propose it will be an offence to do certain things to prevent these liberties which we are supposed to enjoy, but you cannot put them in general terms; you will have to put in some restrictions in some of these cases because you will have to refer to the existing statutes which already prevent the exercise of certain liberties.

The WITNESS: Some limitation will have to be placed upon that. Actually I had the limitation with me here but I did not bother about reading it.

Mr. MARIER: For the liberty of the press you will have to have some restrictions on the one hand because there is already the existing law.

The WITNESS: This taken by itself would produce absolute liberty and perhaps absolute anarchy.

Mr. MARIER: It means that at the end, instead of giving more liberties you are restricting some of the liberties which you were exercising in the past, because there is no statute to determine we had the liberty of human rights.

The WITNESS: This is a very imperfect scheme.

Hon. Mr. LEGER: What was your proviso?

The WITNESS: The proviso was: "Provided that it shall be a defence to any charge hereunder for the accused to establish that the act complained of was lawfully done in the exercise of a right or the performance of a duty pursuant to a valid law in that behalf."

I came to the conclusion that more or less nullified the whole of what went before.

Hon. Mr. LEGER: It would be for the courts to decide—

The WITNESS: I came to the conclusion, as Mr. Marier suggests, that rather than have a general protective or excluding clause like that you would have to take them one by one, *seriatim*, and name them: the Criminal Code; the various statutes. It would be quite a task to do that.

The CHAIRMAN: Is there any further discussion on the suggestion which has been made that we enact a bill of rights as a federal statute? If there are any further questions we will consider them later when we write our report. I have told the committee what my view is, and it is not favourable.

Mr. MARIER: It is mine also. We have no power to ensure a bill of rights, because we would be conflicting with the provinces.

The CHAIRMAN: Can we pass on to the plan suggested by the committee for a bill of rights? It is that there be a constitutional amendment, and to make this specific can we discuss the bill of rights that they themselves suggested for insertion in the British North America Act and get some evidence as to the implications of that course of procedure? Would you be prepared to go on with that, Mr. Varcoe?

The WITNESS: I have not studied that. I do not think I would be of any assistance to the committee to-day.

Mr. MARQUIS: I do not know that we should discuss the proposed bill. Perhaps it would be better to have consultation with the provinces to resolve if the provinces are ready, in turn, for a discussion of that kind. Actually it would be impossible to debate or to comment on a bill of rights of that kind without knowing the opinion of the different provinces on that subject.

The CHAIRMAN: Mr. Marquis, what is the use of instituting consultations with the provinces until we make up our minds whether we think anything of this kind would be desirable even if they did consent?

Now, there has been a good deal of talk about a bill of rights in this country, and we are told that a petition was signed by 500,000 people. The petition set out in the beginning of this document and was signed by very eminent Canadians all over the country. A smaller committee seems to be composed of men who have given this matter a great deal of thought; highly intelligent persons who have done a great deal of work on preparation and have evolved a short, simple bill of rights for incorporation into the British North America Act, and it comes before this committee, and they make their submission. They offered to come and give evidence orally. We feel that probably there will not be time for that; but let us see what that leads us into even if the provinces were all agreeable to it going into the British North America Act. Is not that sensible?

Mr. MARQUIS: What I had in mind was that this bill as drafted should be referred to the provinces for their answer. I understand your point of view that we should first discuss it in the committee in order to get an opinion and to give an opinion, and they will give their own opinion afterwards.

The CHAIRMAN: Yes.

Mr. MARQUIS: I am in entire agreement with you on that point.

The CHAIRMAN: It is half-past five now and we are not prepared to go on with this, and I suggest that in a few moments we adjourn. To me this is very interesting. I will suggest to the committee the kind of questions I would like to have answered, and they are these:—

If this suggested bill of rights were incorporated into the British North America Act, could we have a War Measures Act? Does this bill of rights make it illegal for any legislative body in Canada to subject any person in Canada to arbitrary arrest or detention? Persons may be subjected to arbitrary arrest and detention under the War Measures Act.

Does it make it impossible for us to meet an emergency? Is it necessary to make an exception in favour of an emergency?

Have the exceptions been omitted designedly or are exceptions unnecessary?

It becomes unconstitutional if this is adopted to abridge freedom of speech or of expression or of the press.

Now, under what exceptions, express or implied, can we pass a law against criminal libel? Last night I was debating in the House of Commons as to whether we should amend the section in the Criminal Code preventing the distribution of crime comics. Supposing that parliament next year decides to prevent distribution of crime comics, can the person who distributes them, upon being prosecuted, plead the British North America Act once it is put in that the freedom of the press exists; or is there some implied exception in respect of the Criminal Code? If so, under what does it arise? There seems to be some exception in the United States of America. Is it peculiar to the American constitution, or is it inherent in the British constitution? The problem would never arise in England because parliament is supreme in Great Britain, and parliament ceases to be supreme in Canada the moment this goes into the British North America Act and any breach of these provisions become defences in the courts when existing laws are sought to be enforced.

What are the consequences in as far as dominion laws are concerned? What are the consequences in as far as provincial laws are concerned? What are the consequences in as far as reasonably to be anticipated federal laws and provincial laws are concerned?

Those are all questions that must be answered if we are to deal responsibly with this proposal.

Hon. Mr. HORNER: I thought it would be interesting to have some of these prominent people come before the committee and for you to put those questions to them personally to see what their reaction would be.

The CHAIRMAN: They may have an excellent answer to these questions; but I think the first thing to do is to see what the answer of the Department of Justice is to some of those questions. There may be a good answer.

Mr. MARQUIS: I think the Deputy Minister of Justice could make some valuable comments on the interpretation of those sections and the implications which may derive from the sections as indicated. I understand that some other witnesses may come and give their own opinion, but as to the application of the sections it is a matter of interpretation before a court or a judge. He is obliged to decide, according to the law, and we have the law before us and I think Mr. Varcoe is the right man to give an interpretation and make comments when we have examined these sections.

The CHAIRMAN: I would like to ask, and probably will ask tomorrow, what are the consequences of preventing the suspension of habeas corpus? The British parliament has been suspending habeas corpus in emergencies for hundreds and hundreds of years. If this goes into our constitution it becomes impossible for habeas corpus to be suspended in Canada either by the provinces or the dominion. What are the consequences of these steps? I want to get the answers.

What are the consequences of the provision that everyone has a right to be represented by counsel? Persons have a right to be represented by counsel in our courts at the present time; not the constitutional right, but established right; but they do not have the right to be represented by counsel everywhere. They do not have the right when they go to see a minister, nor have they had for the last twenty or thirty years when they appeared before a conciliation board had that right. Once this goes in is it impossible to regulate the attendance of counsel, or can a man taking a case before anybody always have a lawyer along and insist on his lawyer going with him?

Hon. Mr. HORNER: Lawyers should not object.

Mr. MARQUIS: Some associations ask not to be represented by counsel sometimes. You see, it has been used in another way before some boards in Quebec. I remember that some associations asked not to have any counsel with them.

Hon. Mr. GOUIN: I think your points, Mr. Chairman, were remarkably well taken, because this contemplated bill of rights would to a very large degree abolish the sovereignty of a parliament here in Canada. It would be almost a radical departure from the British system of the sovereignty of parliament in cases of emergency, as you pointed out very clearly. I am of opinion that the constitutionality of Acts or of orders in council would be attacked, and probably those Acts and orders in council would be declared unconstitutional, because there is no implied exception such as I can see in the text which we are discussing. The parliament of Canada and the legislatures would give back in a certain sense a very large percentum of their sovereignty. In other words, under the pretence of protecting the rights of individuals our own country would be going not forward but backward; the statute of Westminster, in other words, would be practically repealed. The dominion of Canada would cease to be, in my opinion, a sovereign and independent nation within the British commonwealth.

The CHAIRMAN: At any rate, I should like to have an answer to my questions or see whether there is an answer.

Hon. Mr. GOUIN: Certainly that is a vital question.

Mr. MARQUIS: There is another principle: the people have the liberty to pass laws through their duly elected representatives, people who are duly elected at an election, and with this they would be deprived of the right of changing the laws on these particular points. So we lose part of our freedom.

Hon. Mr. GOUIN: I call that *deminutio capitis*, to use an expression of Roman law.

The CHAIRMAN: I will ask in order to give full notice of the questions I would like to have answered: what is the value of a provision that people have the right of lawful association, assembly or organization? Is it not implicit in the use of the word "lawful"? If the right exists, does not the right always exist to do anything lawful? And is it not senseless to put in your constitution a provision of what is lawful shall be lawful?

Hon. Mr. GOUIN: It is at least a repetition.

The CHAIRMAN: I would like to know the meaning and the effect of the provision that a person shall not be subjected to unreasonable interference with privacy, family, home or correspondence. Does it mean that the courts will be endowed with the jurisdiction to determine reasonableness by some rule of their own? That is the kind of question I would like to have answered.

Hon. Mr. GOUIN: The discretion of parliament would be replaced by the discretion—

The CHAIRMAN: Of the courts, yes. Are we departing, if we do this—are we moving away from the protection of rights by legislative action into a field of protection of rights by court action? Are we doing that? Are the battles for liberty of the future to be fought in the courts instead of in legislative halls if we adopt this?

Mr. MARQUIS: We have that word "arbitrary" in this section; who may decide what is arbitrary or not?

The CHAIRMAN: There may be good answers to all these questions, but I should like to have them.

Now, gentlemen, we will adjourn until tomorrow afternoon.

